STATE OF MICHIGAN

COURT OF APPEALS

LEO CARRIGAN and NOREEN CARRIGAN, Petitioners-Appellants,	UNPUBLISHED February 2, 2012
v	No. 300381 Tax Tribunal
CITY OF ANN ARBOR, Respondent-Appellee.	LC No. 00-375213

Before: CAVANAGH, P.J., and SAWYER and METER, JJ.

PER CURIAM.

Petitioners appeal as of right from the Tax Tribunal order dismissing their petition appealing respondent's assessment of the value of petitioners' residential condominium. We reverse and remand for further proceedings.

On June 24, 2009, petitioners filed their Tax Tribunal Small Claims petition challenging the assessment of the property for the tax year 2009. The petition form filed by petitioners required that they state their asserted fair market value, state equalized value (SEV), and taxable value (TV) for the property. Petitioners did not specify their contentions regarding fair market value or SEV or TV of the property. Instead, they referred to their prior statement to respondent's Board of Review in which they requested a 10 to 20 percent reduction in the assessed value. Petitioners indicated on the petition form, erroneously, that the property had a principal residence exemption of at least 50 percent for tax year 2009, such that no filing fee was required.

On April 14, 2010, the Tribunal entered its Order Placing Petitioner in Default, instructing petitioners to complete the portion of the petition form requesting their contentions of true cash value, SEV, and TV for the property, and requesting petitioners to pay the required filing fee; these actions were to occur within 21 days or the case would be dismissed as permitted by Tribunal rules. The Tribunal record indicates that this order was mailed to the parties at their addresses of record. Petitioners did not take any action to cure the defects specified in the order of default. Consequently, on June 28, 2010, the Tribunal dismissed petitioners' petition with prejudice. Petitioners moved the Tribunal to set aside the entry of default and to reinstate the action, asserting in part that they did not receive notice of the default. The Tribunal denied petitioners' motion, finding that dismissal was permitted by Tribunal rules. Petitioners assert

that, under the circumstances here presented, the Tribunal's dismissal constituted an abuse of discretion. We agree.

This Court reviews for an abuse of discretion the Tax Tribunal's decision to deny petitioner's motion to set aside the default. *Prof Plaza, LLC v Detroit*, 250 Mich App 473, 475; 647 NW2d 529 (2002). This Court has previously recognized that the Tax Tribunal has "unquestionable" power to dismiss a tax appeal because of a party's noncompliance with a Tribunal rule or order. *Stevens v Bangor Twp*, 150 Mich App 756, 761; 389 NW2d 176 (1986).[1] However, most recently, in *Grimm v Treasury Dep't*, 291 Mich App 140; ___ NW2d ___ (Docket no. 293457, December 16, 2010), slip op at 5, this Court indicated that the Tribunal's exercise of that power is subject to the same analysis applied to entry of a default in any civil action, and that, before dismissing an action, the Tribunal must consider such factors as the willfulness of the defaulting party, whether the defaulting party has a history of noncompliance or deliberate delay, prejudice to the opposing party, any attempts to cure the defect underlying the default, and the availability of other appropriate sanctions.

In *Grimm*, this Court reversed the Tax Tribunal's order dismissing an appeal of a final assessment for unpaid corporate taxes; the Tribunal had based the dismissal on the petitioner's failure to timely correct its failure to provide the specific assessment numbers being appealed. *Id*., slip op at 6. In reversing, this Court explained:

> In *Vicencio* [*v Jaime Ramirez, MD, PC*, 211 Mich App 501; 536 NW2d 280 (1995)], this Court summarized the factors that a trial court applying the Michigan Court Rules should consider before imposing the sanction of dismissal, including:
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> > (1) whether the violation was wilful or accidental; (2) the party's history of refusing to comply with previous court orders; (3) the prejudice to the opposing party; (4) whether there exists a history of deliberate delay; (5) the degree of compliance with other parts of the court's orders; (6) attempts to cure the defect; and (7) whether a lesser sanction would better serve the interests of justice. [*Id.* at 507.]
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> This Court has also evaluated the propriety of Tax Tribunal sanctions by considering similar factors, albeit in unpublished cases. We find the analogy appropriate and adopt the factors summarized in *Vicencio* for the Tax Tribunal to consider before imposing the drastic sanction of dismissal. When considering the sanction of dismissal, the record should reflect that the Tax Tribunal "gave careful consideration to the factors involved and considered all its options in determining what sanction was just and proper in the context of the case before it." *Bass v*

[1] The *Stevens* Court went on to state that "[t]he Tribunal's actions, however, are reviewable for abuse of discretion," and the Court ultimately did find that the Tribunal had abused its discretion by dismissing in that case. *Stevens*, 150 Mich App at 761-762.

> *Combs*, 238 Mich App 16, 26; 604 NW2d 727 (1999), overruled in part on other grounds in *Dimmitt & Owens Fin, Inc v Deloitte & Touche (ISC), LCC*, 481 Mich 618, 628; 752 NW2d 37 (2008). [*Grimm, supra*, slip op at 5-6.]

We find that the Tribunal abused its discretion by dismissing petitioners' action here. While the Tribunal record contains a proof of service indicating that the order of default was mailed to petitioners' address of record, petitioners advised the Tribunal that they did not receive that order and that, consequently, their failure to timely cure the default was not willful.[2] Petitioners' filing of the petition was timely and there was no showing of any history of noncompliance with orders or deliberate delay. Additionally, while petitioners did not state a precise cash value, SEV, or TV for the property in the petition, they did indicate that they were seeking a 10 to 20 percent reduction in the assessment, incorporating by reference a prior written statement relating the alleged basis for such relief. Thus, respondent was aware of the degree of difference between its assessment and petitioners' opinion regarding the value of the property, as well as the basis for that difference. Accordingly, respondent was not prejudiced by the absence of petitioners' precise statement of cash value, SEV, or TV on the petition form. Moreover, while petitioners did not attempt to cure the defect contemporaneously with their motion to set aside the default, they indicated that they "[stood] ready to provide the requested materials and proceed with this matter." Finally, there is no indication in the record that the Tribunal considered, or that it recognized that it had the discretion to consider, options other than dismissal when determining the appropriate sanction for the deficiency in petitioners' filing. Under these circumstances, we conclude that the Tax Tribunal abused its discretion by denying petitioner's motion to set aside the default.

As for petitioners' assertion that they were denied due process by the Tribunal's refusal to issue a subpoena upon written request that it do so, we observe that there is no constitutional right to discovery as a matter of right in any judicial or quasi-judicial proceeding, including an administrative proceeding. *In the Matter of Del Rio*, 400 Mich 665, 687 n 7; 256 NW2d 727 (1977). Further, the Tax Tribunal is allowed to promulgate its own rules of practice and procedure. MCL 24.274; MCL 205.732. The instant petition was filed in the Tribunal's Small Claims Division. Tax Tribunal rules do not provide for discovery in small claims cases, except by leave of the Tribunal. See TTR 111, 1999 AC, R 205.1111(3). Because petitioners did not properly seek leave of the Tribunal for discovery, the Tribunal did not abuse its discretion by declining to issue the requested subpoena in response to petitioners' informal request that it do so. *Perry v Vernon Twp*, 158 Mich App 388, 392; 404 NW2d 755 (1987).

Petitioners also contend that the Ann Arbor Assessor's Office Board of Review's failure to complete the second page of Form 618, which would apprise petitioners of the reason for its decision, deprived them of due process. While petitioners are entitled to be apprised of the basis for the Board's decision, see, e.g., *Bickler v Dep't of Treasury*, 180 Mich App 205; 446 NW2d

[2] We note that approximately two months after the order of default, petitioners sent a letter to respondent requesting action on a prior subpoena request; this letter made no mention of the order of default.

644 (1989), and Form 618, because "a proceeding before the [T]ribunal is original and independent and is considered de novo," MCL 205.735a(2), the alleged defect in the Board's statement of its decision did not affect petitioners' opportunity for meaningful review of the assessment by the Tribunal. "'Due process of law requires notice and opportunity to be heard. It imports the right to a fair trial of the issues involved in the controversy and a determination of disputed questions of fact on the basis of evidence.'" *Napuche v Liquor Control Commission*, 336 Mich 398, 403; 58 NW2d 118 (1953), quoting *Dation v Ford Motor Co*, 314 Mich 152, 167; 22 NW2d 252 (1946). Regardless whether the Board properly advised petitioners of the basis for its decision, petitioners retained the full opportunity to have their challenge heard and decided de novo based on evidence presented before the Tribunal; the basis for the Board's decision was not crucial to the Tribunal's "original and independent" determination of the propriety of the assessment. Accordingly, the Board's purported failure to complete the second page of the petition form did not deprive petitioners of due process in this proceeding before the Tribunal.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ David H. Sawyer
/s/ Patrick M. Meter